Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Development of Nationwide Broadband Data to	)	
Evaluate Reasonable and Timely Deployment of	)	WC Docket No. 07-38
Advanced Services to All Americans, Improvement	)	
of Wireless Broadband Subscribership Data, and	)	
Development of Data on Interconnected Voice over	)	
Internet Protocol (VoIP) Subscribership	)	

COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION, THE KENTUCKY MUNICIPAL UTILITIES ASSOCIATION, BARBOURVILLE UTILITY COMMISSION, BARDSTOWN MUNICIPAL UTILITIES, FRANKFORT PLANT BOARD, FRANKLIN ELECTRIC PLANT BOARD, GLASGOW ELECTRIC PLANT BOARD, HOPKINSVILLE ELECTRIC SYSTEM, MAYFIELD ELECTRIC AND WATER SYSTEM, MURRAY ELECTRIC SYSTEM, OWENSBORO MUNICIPAL UTILITIES, PADUCAH POWER SYSTEM, PRINCETON ELECTRIC PLANT BOARD, RUSSELLVILLE ELECTRIC PLANT BOARD, AND CITY OF WILLIAMSTOWN, KY

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AND CITY OF WILLIAMSTOWN, KY

The American Public Power Association ("APPA"), the Kentucky Municipal Utilities Association ("KMUA"), Barbourville Utility Commission, Bardstown Municipal Utilities, Frankfort Plant Board, Franklin Electric Plant Board, Glasgow Electric Plant Board, Hopkinsville Electric System, Mayfield Electric and Water System, Murray Electric System, Owensboro Municipal Utilities, Paducah Power System, Princeton Electric Plant Board, Russellville Electric Plant Board, and City of Williamstown, KY (collectively, "Municipal

Utilities"), submit these comments in response to the request for comments on Part IV(B) of the Further Notice of Proposed Rulemaking ("*FNPRM*"), released June 12, 2008, in the above-captioned matter.

Created in 1940, APPA represents the nation's more than 2,000 community-owned electric utilities that serve more than 45 million Americans. Its purpose is to protect and advance the interests of community-owned public utilities and their consumers. Over 600 public power systems across the country now provide some kind of advanced communications services, whether for internal or external purposes. These services include high-speed Internet access, VoIP, cable television, and local long-distance telephone services. As was the case with electric power decades ago, many public power systems provide broadband services to communities that have not been adequately served by the private sector. For many smaller and more rural communities across the nation, provision of broadband services by public power entities is the only means for those communities to obtain truly broadband services and is thus vital for their economic well-being in today's globalized economy.

KMUA was formed in 2007 as a result of a planned merger between the Municipal Electric Power Association of Kentucky ("MEPAK") and the Municipal Water and Waste Water Association of Kentucky ("MWWAK"). Fourteen of MEPAK's 29 members provide, or are currently planning to provide, advanced communications services to their residents, making Kentucky the leading state in the nation in terms of number and percentage of Municipal Utilities providing such services.

Several KMUA members that provide communications services to their residents also join these comments. They are: Barbourville Utility Commission, Bardstown Municipal Utilities, Frankfort Plant Board, Franklin Electric Plant Board, Glasgow Electric Plant Board,

Hopkinsville Electric System, Mayfield Electric and Water System, Murray Electric System, Owensboro Municipal Utilities, Paducah Power System, Princeton Electric Plant Board, Russellville Electric Plant Board, and the City of Williamstown, KY.

I. BROADBAND DATA GATHERING AND MAPPING SHOULD BE A GOVERNMENT FUNCTION.

The Municipal Utilities' views on broadband mapping issues are reflected in the attached APPA Resolution 08-12, adopted by the APPA membership at its annual meeting on June 24, 2008.

Universal broadband deployment is critical for the economic health and future economic growth of our nation. It is especially important for the government to promote broadband deployment in rural and historically underserved areas. Accurate and widely available broadband deployment data and mapping is critical to achieving these goals. Hence, we fully endorse the *FNPRM*'s proposal for "the adoption of a national broadband mapping program" and its tentative conclusion that "the Commission should collect information that providers use to respond to prospective customers to determine on an address-by-address basis whether service is available." *FNPRM* ¶¶ 34 & 35. We also support the *FNPRM*'s goal of adopting "a national broadband mapping program with the objective of creating a highly detailed map of broadband availability nationwide." *Id.* at ¶ 34.

We question, however, the *FNPRM*'s seemingly heavy reliance on the ConnectKentucky ("CK") program as the proper model for state-level broadband data collection and mapping as a feeder system for any federal mapping program. As Commissioner Copps noted in his statement accompanying the *FNPRM*, "creating good data is really a core function of government," because "good data . . . is the bedrock of good policy," and the private sector makes its "most

critical decisions [based on] government statistics."[1] The reason should be obvious: government broadband policy can be no better than the data on which it is based, and the same is true of broadband providers' business decisions.

The CK model, in contrast, is to privatize this data gathering and mapping function, with the government's role reduced to providing funding to a private non-profit to perform the function. Moreover, under the CK model, there is no formal requirement that the government have any access to and oversight and enforcement authority with respect to the non-profit's underlying data, its activities or its funding or other relationships with the private industry sector.

The flaws in such a privatized data gathering and reporting model are inherent to the structure of the arrangement and do not turn on whether, in any particular instance, the private non-profit entity behaves in a proper or improper way.[2] Data gathered by a private entity and shielded from government access is inherently non-transparent and thus its reliability is by definition not independently verifiable. Also, unlike a government agency, a private entity is under no legal obligation to solicit and respond to inputs and views of other parties, and its deliberations and activities in assembling and synthesizing the data it receives are likewise shielded from public review or legal challenge.

Similarly, unlike a broadband provider that may, as a regulatee, be required to report accurately to a government regulatory agency, a private non-profit that is not itself an agency regulatee is not subject to oversight or sanction by its overseeing government agency for inaccurate reporting.

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[1] Statement of Commissioner Michael J. Copps, Approving in Part and Concurring in Part, WC Docket No. 07-38, R&O and FNPRM (rel. March 19, 2008).

[2] We are aware that on July 11, CK's parent, Connected Nation ("CN"), filed a lengthy and detail *ex parte* in this docket defending CK and criticizing APPA's and KMUA's July 1 *ex parte*. We disagree with much of what CN said in that *ex parte*, but given the short deadline for opening comments in this portion of the *FNPRM*, we will respond to CN's July 11 *ex parte* allegations to the extent appropriate later in the proceeding. For present purposes, we emphasize structural flaws in the privatized CK model, not the specific behavior of, or influences within, CK itself.

As a result, a private non-profit like CK is neither fish nor fowl: It is neither a government agency subject to statutory governmental obligations of transparency, responsiveness to public input, reasoned decisionmaking and accountability, nor it is a regulatee subject to its regulatory agency's sanction for inaccurately reporting the data it delivers to the government and the public.

In short, the CK model represents the privatization of the government function of data gathering and reporting. That the output of CK's data-gathering work – the broadband map itself – may be available to the public is no cure to the fact that the underlying data and the decisions regarding data categorization and synthesization on which the map is built are not. The map is no better than the underlying data and data-synthesizing process on which it is built. And that is what the CK model shields from public or government oversight.

These are no small matters; the stakes are enormous. The FCC's, as well as other governmental bodies', policy decisions concerning what is the most appropriate policy to promote broadband deployment, especially in rural and historically underserved areas, will be significantly influenced by what the data show concerning the pace and scope of broadband deployment. There is consequently always the risk that if the data-gathering and data-synthesizing function is performed by a private non-profit entity populated by persons with industry connections and/or funded in significant part by industry, its data output may be skewed, consciously or unconsciously, in the direction of supporting the interests of those that financially support or have influence with that entity. It is therefore essential that broadband policymakers are assured that the data on which they rely be transparently-generated and compiled, verifiable and thus reliable.

Accordingly, any and all broadband data collected by the FCC should be obtained directly from broadband providers and not filtered through any intermediary non-profit, non-provider entities. The translation and synthesis of that data into a national broadband mapping program, whether performed nationally or an accumulation of state-by-state data synthesis and mapping, should likewise be performed by government, or if by a private party, subject to strict government and public oversight, input and disclosure.

That is not to say that there is no role for private non-profit entities in the process. There is, but to the extent such non-profits perform data gathering and synthesis for government, those activities must be subject to government oversight and control. There also should be enforceable standards to assure an arms-length relationship between the non-profit and industry members. And finally, the non-profit's underlying data and work must be subject to the same public records and disclosure rights, and protections, as government records.

II. THE *FNPRM*'S CONFIDENTIALITY CONCERNS RELATED TO BROADBAND MAPPING ARE OVERSTATED.

The *FNPRM* (at ¶ 35) seeks comment "on how to maintain the confidentiality of broadband service information." We comment here only on one aspect of this issue.

Whatever steps the Commission takes with respect to giving confidential treatment to individual providers' broadband deployment information, it should do so exclusively through the confidentiality protections (and exceptions) available under the FCC's rules and the Freedom of Information Act ("FOIA"). It should not countenance the protection of such information through the privatization of its collection, as occurs in the CK model. That would circumvent entirely the important public function of FOIA and the FCC's rules implementing it, which protect certain types of information but not others, and provide formal avenues to challenge any decision to withhold information from the public.

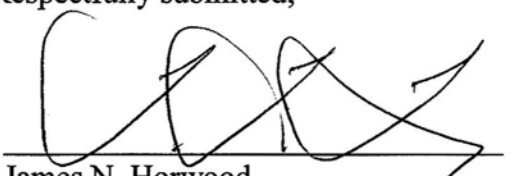
We also note that most industry concerns about the need for protection of supposedly competitively sensitive and proprietary information about an individual provider's broadband deployment are exaggerated. In most areas, the major actual and/or potential landline broadband providers – the local telephone and cable companies and the local utility – either know, or can fairly easily find out, where each is deploying and marketing broadband in a given local market. The reason is that each can, and typically does, monitor the right-of-way and system construction work and marketing efforts of the other. Thus, most broadband providers know who and where their competitors are in a given market.

The only parties that typically do not know where broadband is being deployed in a market are, ironically and unfortunately, potential subscribers and federal, state and local government policymakers. The Commission should keep this in mind in assessing claims about the need to protect the confidentiality of such broadband deployment information

CONCLUSION

The Municipal Utilities strongly support the *FNPRM*'s goal of creating a detailed nationwide broadband mapping program. We believe, however, that any broadband data gathering, synthesizing and mapping should be a government function and not privatized, because sound broadband policy depends on transparently-generated and verifiable data. We also believe that the broadband data confidentiality concerns expressed in the *FNPRM* are overstated.

Respectfully submitted,



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July 17, 2008

Resolution 08-12
Sponsor: Franklin (Kentucky) Electric Plant Board

In Support of Public Entities Undertaking Broadband Mapping

Universal broadband deployment is critical for the economic health of our nation. It is especially important to promote broadband deployment in rural and historically underserved areas. All well-qualified service providers, including municipal utilities, should be encouraged to provide broadband service to such areas, and no segment of the broadband service provider market should be competitively disadvantaged.

To formulate effective and competitively neutral policies to promote broadband deployment in rural and historically underserved areas, data on the status of broadband deployment must be transparently-generated and compiled, verifiable and thus reliable. Without such data, policymakers and broadband service providers such as municipal utilities cannot make informed judgments on where broadband deployment is in most need of promotion and the appropriate methods to promote that deployment. The American Public Power Association (APPA) therefore strongly supports the gathering and reporting of accurate and reliable broadband deployment data and mapping.

The valuable goals of broadband mapping, however, have in many respects been frustrated by initiatives to privatize broadband deployment mapping and reporting and to prevent government performance of these important public functions. The movement originated with ConnectKentucky, a private non-profit organization with reportedly close ties to AT&T but whose full nature is undisclosed at its website. ConnectKentucky has succeeded in securing from the Commonwealth of Kentucky the exclusive authority to

gather and report broadband deployment mapping in that state, as well as state funding to perform that task. The broadband deployment information ConnectKentucky receives from providers is confidential and thus shielded from public view or any means of objective verification. Although depicted as a "public/private partnership," ConnectKentucky is "public" only in the sense that it receives taxpayer money from the state government; its activities are purely private. ConnectKentucky also charges a $20,000 membership fee, an amount that effectively excludes most municipal utilities. And ConnectKentucky tends to promote primarily the broadband services of incumbent providers such as AT&T, whose DSL service is actually far less "broad" than the broadband service that municipal utilities and others provide. Moreover, ConnectKentucky's claims of success in promoting broadband deployment in Kentucky are inconsistent with the conclusions reached by more independent sources, which have found little or no gain in Kentucky broadband deployment as a result of ConnectKentucky's activities.

ConnectKentucky led to the creation of Connected Nation, a national organization whose goal is to spread the ConnectKentucky model to other states and to the federal level. Connected Nation has successfully expanded the model to Tennessee, Ohio, West Virginia and South Carolina, and other states are considering following suit. Moreover, Connected Nation has backed the introduction of several bills in Congress, each of which would, in one form or another, establish a federal grant program for state-level broadband mapping , with grant eligibility requirements that would give Connected Nation or its state-level affiliates the inside track on receiving federal grants and would prohibit grants

to state agencies or to entities whose board of directors has a majority of individuals employed by or affiliated with federal, state or local governments.

As FCC Commissioner Michael J. Copps has noted, "creating good data is really a core function of government." Broadband deployment mapping and reporting should therefore not be privatized. It instead should be a transparent, competitively neutral process, and one that permits municipal utilities and their representatives to participate on an equal footing with incumbent private telephone and cable companies and to receive the same benefits as those companies. That will not occur if the Connected Nation model, at least in its present form, is adopted at the state or federal level.

NOW, THEREFORE, BE IT RESOLVED: That the American Public Power Association (APPA) believes that broadband reporting and mapping should be a transparent process performed by government instead of private entities;

BE IT FURTHER RESOLVED: That any broadband mapping grant program enacted by Congress provide that only a state agency is eligible for the grants, and that any such grant is conditioned on state-level broadband mapping being a transparent process in which municipal utilities may equally participate; and

BE IT FURTHER RESOLVED: That the Federal Communications Commission adopt rules in Docket Number 07-38 to establish new national broadband mapping and reporting rules that are transparent, that appropriately define broadband, that differentiate

between business and residential customers, and that provide due regard for the unique role of municipal utilities in meeting national broadband deployment objectives.

As adopted June 24, 2008 by the membership of the American Public Power Association at its annual meeting in New Orleans, Louisiana.